AMERICAN BAR ASSOCIATION

COMMISSION ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
SENIOR LAWYERS DIVISION
LAW STUDENT DIVISION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
COMMISSION ON DOMESTIC VIOLENCE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association urges law schools to require legal employers that recruit on campus to disclose, and to make available to the school's students and alumni, specific information regarding the employer's pro bono policies, practices and activities;

FURTHER RESOLVED, That the American Bar Association urges law schools to adopt the Pro Bono Disclosure Requirements for Law School Recruiters, dated August 2006;

FURTHER RESOLVED, That the American Bar Association urges law schools to make available to their faculty, students and alumni and prospective students specific information regarding the policies and practices the law school maintains to enable and encourage pro bono work by all members of the law school community.

121B

PRO BONO DISCLOSURE REQUIREMENTS FOR LAW SCHOOL RECRUITERS

(AUGUST 2006)

Pursuant to Resolution 121B, the American Bar Association urges law schools to require legal employers that recruit on campus to disclose, and to make available to the school's students and alumni, specific information regarding the employer's pro bono policies, practices and activities, including:

(a) stated goals regarding the number of pro bono hours to be contributed by the employer each year;

(b) the number of actual pro bono hours contributed by the employer in the prior calendar year;

(c) the average number of pro bono hours contributed by junior associates, midlevel associates, senior associates, and partners at the firm in the prior calendar year;

(d) whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets);

(e) whether and to what extent attorneys' commitment to pro bono activity is considered a favorable factor in advancement and compensation decisions;

(f) what formal structures the employer maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and

(g) whether the employer provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.

REPORT

Introduction

This report urges law schools to require legal employers that recruit on campus to provide information to their law students and alumni regarding the employer's pro bono policies, practices and activities. It specifically urges law schools to adopt *Pro Bono Disclosure Requirements for Law School Recruiters.* The report further urges law schools to provide information to their faculty, students, alumni and prospective students about the policies and practices the law school maintains to enable and encourage pro bono work by all members of the law school community.

These recommendations, together with those contained in reports 121A and 121C, were prompted by what the Legal Services Corporation has identified as a "major gap between the legal needs of low-income people and the legal help that they receive."[1] Forty-three million Americans currently qualify for civil legal assistance provided by LSC-funded programs. Yet legal services lawyers can provide assistance to fewer than one in five poor Americans and to fewer than half of those clients who find their way to a legal services office.

In August 2005, ABA President Michael S. Greco responded to the unmet need for legal services by calling for a Renaissance of Idealism in the Legal Profession—a "recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good." He appointed a commission[2] to develop approaches for advancing these goals among lawyers in every segment of the profession.

At the 2006 Midyear Meeting, the House of Delegates adopted a policy presented by the Commission which urged all lawyers to engage in community service activities.[3] This report and the two reports (121A and 121C) that accompany it seek to build on that policy.

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[1] *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans, Legal Services Corporation (September 2005)*

[2] The Commission includes lawyers drawn from diverse practice settings, including the managing partner of one of the nation's largest law firms and the former managing partner of another; solo and small firm lawyers; the general counsel of a major corporation; government and military lawyers; a lawyer for a nonprofit organization; a law school dean; and a sitting federal judge.

[3] That policy reads as follows:

RESOLVED, That the American Bar Association urges all lawyers to contribute to the public good through community service in addition to exercising their professional responsibility to deliver pro bono service, in accordance with Model Rules of Professional Conduct Rule 6.1, where applicable.

FURTHER RESOLVED, That the American Bar Association urges legal providers and other entities that employ lawyers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.

The Importance of Leadership by America's Law Schools

The future of pro bono rests with our nation's law schools. Over the last two decades, the ABA has adopted several policies seeking to institutionalize the importance of law school pro bono programs and instill an ethic of public service among the students they serve. In 1988, the ABA urged law schools to adopt a policy asking legal employers that recruit on campus to provide a written statement of their pro bono policies, if any.[4] In 1993, the ABA encouraged law schools to develop pro bono/public service programs as components of their skills training curricula or programs and to exchange information about such programs through the Section of Legal Education and Admissions to the Bar.[5]

In 1996, the ABA amended its Standards for Approval of Law Schools to provide that "[a] law school should encourage its students to participate in pro bono activities and provide opportunities for them to do so."[6] Subsequently, in February 2005, the Standards were revised to provide that "a law shall offer substantial opportunities for . . . student participation in pro bono activities." [7] Thus, the revised Standards require rather than merely encouraging schools to provide pro bono opportunities. The revised Standards also require schools to establish policies with respect to full-time faculty members' obligations to the public, including participation in pro bono activities.[8]

While the 1988 ABA policy urged law schools to ask legal employers that recruit on campus to provide a written statement of their pro bono policies, many schools do not do so. And those that do often find that asking is not enough: some employers do not provide the information, and when they do it is often not very helpful.

The National Association for Law Placement (NALP) asks employers to complete an annual workplace questionnaire which attempts to make law firm pro bono policies and practices more transparent to law students by tracking and capturing such information for use by the students in their career decision making process.[9] While the questionnaire is a valuable tool, NALP cannot compel law firms to complete it. Law schools can require such information, however, and should. Thus, this report urges law schools to require legal employers that recruit on campus to disclose, and to make available to students and alumni, specific information regarding their pro bono policies, practices and activities.

That information should include: (a) the firm's stated goals regarding the number of pro bono hours to be contributed by the firm each year; (b) the number of actual pro

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[4] ABA Policy and Procedure Handbook, 2004-2005, Pro Bono, 8/88, at 268-269.
[5] *See* Pro Bono Programs for Law Schools, 8/93, *id.* at 262.
[6] ABA Standards for Approval of Law Schools, 2005-2006, at 19. Former Standard 302 (e) was revised in February 2005.
[7] *See* Standard 302(b)(2), *id.* at 19.
[8] *See* Standard 404, *id.* at 32. *See also* Preamble to the Standards which mandates that law schools "must provide an educational program that ensures that its graduates understand the law as a public profession calling for the performance of pro bono legal services." *Id.* at viii.
[9] *See* www.nalpdirectory.com.

bono hours contributed by the firm in each of the last three years; (c) the average number of pro bono hours contributed by junior associates, midlevel associates, senior associates, and partners at the firm in each of the last three years; (d) whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets); (e) whether and to what extent attorneys' commitment to pro bono activity is considered a favorable factor in promotion and compensation decisions; (f) what formal structures the firm maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and (g) whether the firm provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.

Today's students and young lawyers want and need inspiration to engage in pro bono as well as specific information that will help them incorporate this work into their practice. Such information will enable them to critically evaluate a firm's commitment to pro bono and assist in making pro bono opportunities part of their decision in selecting among employer options. It will also enable them to feel more comfortable asking about a firm's pro bono policy and in getting accurate information about the reality of a pro bono practice within a law firm during the interviewing process. Morover, given the vigorous competition among employers for strong candidates, if enough students express an interest in pro bono work, law firms will improve their pro bono programs and make this a selling point for the firm.

Law schools should also provide members of the law school community with information about their own pro bono policies and practices. Although the Standards require schools to provide appropriate pro bono service opportunities for students and to encourage such service by faculty members, many institutions neither keep nor disclose specific information concerning the policies and practices the law school maintains to enable and encourage pro bono work by all members of the law school community.

Until relatively recently, formal law school pro bono programs were rare. Most students' exposure to public interest causes and low-income clients occurred in clinical courses, externships, or summer jobs. In the late 1980's, a growing number of faculty, administrators, and students began encouraging law schools to take a more active role in promoting pro bono service, and Tulane instituted the first law school pro bono service requirement. Over the next fifteen years, most schools developed formal pro bono programs, and about a fifth adopted public service graduation requirements.[10] Today, thirty-one accredited law schools have pro bono or public service graduation requirements, with roughly another 89 schools having a formal, administratively supported voluntary program and the remainder relying on student groups to provide opportunities.[11] Only a small minority of schools have no organized pro bono program.

The Association of American Law Schools (AALS) Commission on Pro Bono and Public Service Opportunities marked the first systematic effort by the AALS to

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[10] *Handbook on American Law School Pro Bono Programs*, AALS Pro Bono Project, June 2001, at 7-8.
[11] *ABA Directory of Law School Public Interest and Pro Bono Programs* at www.abaprobono.org/lawschools.

address the role of pro bono and public service in legal education. In *Learning to Serve*[12], the Commission recognized that law school pro bono programs serve two central objectives.

> One is to provide positive experiences to students that will encourage their future involvement as practitioners. . . Second, law school pro bono programs have independent educational value, whatever their effects on lawyers' future involvement. Such programs provide many participants their only direct knowledge of how the system functions, or fails to function, for the have nots. To give broad segments of the bar some experience with what passes for justice among the poor may lay foundations for constructive social change.[13]

The Commission also identified practical benefits of pro bono programs for law students, including learning legal skills, exploring alternative career paths, developing professional contacts, and becoming involved in their communities.[14]

For law schools, pro bono programs also prove beneficial in several respects apart from their educational value for students. Successful projects contribute to law school efforts in recruitment, public relations, and development. Individual faculty can profit as well from community contacts, and from opportunities to enrich their research and teaching.[15] Hence, the absence of well-supported pro bono programs represents a missed opportunity for both the profession and the public.

In her new book, *Pro Bono in Principle and in Practice,* Deborah L. Rhode observes that "[a]lthough support for public service has grown dramatically over the last two decades, most practitioners have yet to embrace the view, set forth in bar ethical codes, that 'every lawyer has a professional responsibility to provide legal services to those unable to pay.'"[16] One of the reasons Rhode cites is the lack of support for pro bono in America's law schools. She notes
[m]any practitioners entered law school with interests in social justice and public interest work and encountered too little support for such concerns."[17] Although a majority of surveyed graduates believed that their school supported pro bono service, responses to specific questions identified major institutional failures. [18] For example, only about a

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[12] *Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities,* October 1999. This publication is also available online at www.aals.org/probono/report.html
[13] *Id.* at viii.
[14] *Id.*
[15] *See* Deborah L. Rhode, Promoting Pro Bono, *The National Law Journal,* September 12, 2005.
[16] Deborah L. Rhode, *Pro Bono in Principle and in Practice,* Stanford University Press, 2005 at page 25.
[17] *Id.* at 165.
[18] *See also The Pedagogy of Public Service: Assessing the Impact of Mandatory Pro Bono on Young Lawyers,* Robert Granfield, Ph.D., September 2005. In this study, respondents from three separate law schools with mandatory pro bono graduation requirements reported high satisfaction levels with the operation of the mandatory program at their school. They believed that it increased their awareness of the legal needs of the poor and marginalized. They also overwhelmingly believed that the experience taught

third of responding lawyers believed that the financial resources devoted to pro bono activities were adequate; only 3% reported support from faculty, and only 1% recalled public service issues arising in orientation programs and professional responsibility courses.[19]

Other national surveys have yielded similar findings. According to the AALS Commission's Report, although approximately half of all schools provide formal administrative support for voluntary programs, administrators of such programs reported that only about one-quarter to one-third of the students at their schools participated and average time commitments were quite limited.[20] Accordingly, the Commission concluded that the majority of students graduated without pro bono legal work as part of their educational experience.[21] Although some schools have recently strengthened their pro bono programs, there is no evidence that student involvement in voluntary programs has increased dramatically.[22] Consequently, most schools remain a considerable distance from meeting the AALS Commission's recommendation that every institution "make available to all students at least once during their law school careers a well-supervised law-related pro bono opportunity and either require the students' participation or find ways to attract the great majority of students to volunteer."[23]

These findings suggest that although law schools have come a long way in demonstrating their long-term commitment to the development of pro bono programs and initiatives, more must be done to institutionalize pro bono within the law school environment . Perhaps the most important step that law schools can take to demonstrate their support for pro bono is to increase the visibility of their pro bono activities. This recommendation urges law schools to make available to their faculty, students, alumni, and prospective students information regarding the policies and practices they maintain to enable and encourage pro bono work by all members of the law school community.[24]

Conclusion

By requiring law firms that recruit on campus to provide complete information about their pro bono policies, practices and activities, and by providing such information

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them some realities about the legal system and a majority indicated that they acquired useful legal skills. It is interesting to note, however, that one of the only areas in which attorneys registered high levels of dissatisfaction was the integration of their pro bono experiences with general coursework. *Id*. at 77-80.

[19] *Pro Bono in Principle and in Practice, Supra at165.*

[20] *Learning to Serve, supra* at 10.

[21] *Learning to Serve, supra* at 2.

[22] Promoting Pro Bono, *supra*.

[23] *Learning to Serve, supra at* 7.

[24] While the ABA Standards for Approval of Law Schools already require schools to provide appropriate pro bono service opportunities for students and to encourage participation by faculty, it is unclear what a school must do to comply. The ABA Council of the Section of Legal Education and Admission to the Bar has approved new Interpretation 302-10 of Standard 302(b)(2), *supra*, which will provide clearer information for law schools about their responsibilities under this standard. The Council will seek concurrence of this interpretation from the ABA House of Delegates at the House's August 2006 meeting. Further information about the New Interpretation can be viewed at http://www.abanet.org/legaled/standards/adoptedstandards2006/interpretation302_10.pdf.

about their own pro bono programs, America's law schools can play an important role in establishing a culture of pro bono in this country. In so doing, they will benefit the university community and ensure greater access to justice for the indigent and underserved.

Respectfully submitted,

Mark D. Agrast, Chair
Commission on the Renaissance of Idealism in the Legal Profession
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